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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 334 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

POWER BUILD LIMITED  
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Appearance:

MR MANISH R BHATT for Petitioner  
NOTICE SERVED for Respondent No. 1  
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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

Date of decision: 20/12/1999

ORAL JUDGEMENT

(PER PATEL,J)

1. At the instance of CIT, Baroda reference is made by the Tribunal raising the following question of law as under:

"Whether, on the facts and in the circumstances of the case and in law the Tribunal was right in coming to the conclusion that the payment made towards royalty to the collaborators was an allowable revenue expenditure?"

2. The assessee, carrying on business of manufacturing various types of motors and weighing machines, was assessed for the Assessment Year 1979-80. Before the Assessing Officer, the copy of agreement, dated 31.3.1976 was filed. The said agreement was thereafter amended on 3.3.1977. In view of the original agreement, the assessee-company was under obligation to return the books, technical data papers, drawings relating to the products authorised to be manufactured by the foreign collaborators. However, in view of amended agreement, the assessee was entitled to retain all these documents, technical data, design, documentation etc. In view of the earlier agreement, the assessee was allowed to manufacture for a period of five years. However, later on there was no such restriction. It is in view of this the Assessing Officer has not considered the amount of Rs.79,916/- as revenue expenditure. The Tribunal on the facts found that in the original agreement there was no renewal clause and the documents, that is to say, the technical know-how was required to be returned to the collaborators. However, in view of the later agreement for which no extra payment was to be made, the assessee was entitled to retain the technical know-how. The Tribunal held that if it had any value, the assessee might have been expected to pay for it. The Tribunal further held that it can not be inferred that there was no particular value in the retention of the know-how documentation. Therefore, it can hardly be said that the assessee obtained an advantage of an enduring nature. It is required to be noted that the assessee was not a new unit engaged in manufacturing various types of motors and weighing machines and this advantage or benefit even if acquired to facilitate to run the existing business, it should be treated as revenue expenditure, in view of the decisions of this court reported in 210 ITR 950 and 220 ITR 53. It is not necessary to discuss in detail in view of settled legal position and facts of the case.

3. In view of what what we have stated hereinabove,  
the answer is in affirmative, i.e. in favour of the  
assessee and against the revenue.

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